IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Government Appeal No. 1095 of 2001
(Old No. 1414 of 1984)

The State

…….. Appellant

Versus

1. Makan Singh S/o Vijai Singh
2. Kunwar Singh S/o Not know

Both R/o Village Gadoliya,
P.S. Tehri, Distt. Tehri Garhwal.

……. Accused Respondents

Mr. G.S. Sandhu, A.G.A. For the appellant State.
Mr. Syed Nadim (Amicus Curiae) for the accused respondents.

Hon'ble Prafulla C. Pant, J.

This appeal, preferred under Section 378(3) of the Code of Criminal Procedure, 1973 (for brevity hereinafter Cr.P.C.), is directed against the judgment and order dated 15.02.1984, passed in Sessions trial No. 15 of 1983, by the then learned Sessions Judge, Tehri Garhwal, whereby the accused respondents were acquitted by said court of the charge of the offences punishable under Section 307 / 34 of the Indian Penal Code, 1860 (for brevity hereinafter I.P.C.).

2) Heard learned counsel for he parties and perused the entire evidence on record.

3) Prosecution story, in brief, is that on 24.05.1983, P.W. 2 Vijai Singh (S/o Goria Singh) invited P.W. 1 Khem Singh (informant) resident of Village Pidakot, Patti

Hindolakhal, District Tehri Garhwal at his residence in Village Bagi, Patti Bangarh, District Tehri Garhwal in connection with pooja of local diety 'Narsingh Bhagwan'. When Khem Singh reached there accused respondents Makan Singh and Kunwar Singh also came there. Accused Makan Singh asked the informant Khem Singh, whether he is real 'Chauhan' or 'Dom Chauhan'. Whereupon, informant told him that he was a real 'Chauhan' and he could catch hold of a live snake, as he is a 'Nagvanshi Chauhan'. However, in the quarrel, accused Makan Singh lost his temper and caught hold of the testicles of the informant. The informant, meanwhile, made efforts to save himself but accused Makan Singh asked accused Kunwar Singh to teach the informant a lesson, on which accused Kunwar Singh took out a sharp edged knife and gave a blow of knife on the person of informant Khem Singh with an intention to cut his throat. However, luckily, it did not hit the throat but a piece of lower lip of the informant got cut. The First Information Report on the incident was lodged on the very day, at about 11:30 P.M., with Patti Patwari Palethi Bangarh, District Tehri Garhwal. (In Uttaranchal hills, in certain areas, revenue officials are given police powers). The said report was registered against the aforesaid two accused respondents relating to offences punishable under Section 307, 326 and 506 of I.P.C. P.W. 7 Ram Swaroop Bhatt, investigated the crime and submitted charge sheet on 19.07.1983, against both the accused respondents, for their trial in respect of the offence punishable under Section 307 of I.P.C.

4) It appears that after giving necessary copies to both the accused, the Magistrate concerned, committed the case to the court of Sessions. Learned Sessions Judge, after hearing the parties on 16.11.1983, framed charge of offence punishable under Section 307 of I.P.C. against accused Kunwar Singh and the one punishable under Section 307 read with Section 34 of I.P.C., was framed against accused Makan Singh. Both the accused pleaded not guilty and claimed to be tried. On this prosecution got examined P.W. 1 Khem Singh (informant); P.W. 2 Vijay Singh S/o Goriya Singh; P.W. 3 Vijay Singh S/o Matbar Singh; P.W. 4 Bachan Singh, P.W. 5 Tummi Singh; P.W. 6 Mukand Singh (all eyewitnesses); P.W. 7 Ram Swaroop Bhatt (Investigating Officer); P.W. 8 Dhoom Singh (Investigating Officer who submitted the charge sheet) and P.W. 9 Dr. K.S. Rawat (who medically examined the injured). The oral and documentary evidence appears to have been put to both the accused respondents under Section 313 of the Cr.P.C., in reply to which they alleged the same to be false. After hearing the parties, the trial court found charge framed against the accused not proved beyond reasonable doubt, and acquitted them. Hence, this appeal. The appeal was filed by the State against acquittal of both the accused respondents, before the Allahabad High Court in the year 1984, from where the same has been received by way of transfer to this Court, under Section 35 of the U.P. Re-organization Act, 2000, for its disposal.

5) On examination of the lower court record, I found that the trail court has given following reasons for acquitting the accused respondents:

(i) The delay in lodging the First Information Report (Ext. A –1) was unexplained one.

(ii) There is confusion as to the place of incident narrated by the witnesses, as some of the witnesses have stated that the incident has taken place inside the room, while others have stated that it took place outside in the courtyard.

(iii) The medical evidence does not corroborate the prosecution story, as narrated by the witnesses.

(iv) The motive for commission of crime disclosed by prosecution is vague and doesn't appear to be probable.

(v) There were contradictions in statements of the eyewitnesses which goes to discredit the prosecution story.

6) Though, after going through the evidence on record, this Court is of the view that there is scope to believe the delay in lodging the First Information Report was explained, and there is also room to explain the contradictions, which has come up in the statements of the eyewitnesses. But where there are two views possible, it is settled principle of law, that the judgment acquitting the accused respondents should not be reversed merely for the reason that other view, could have been taken. Had it been a case where only view possible from the evidence on record was that the charge against accused respondents is proved by the prosecution, this Court would have allowed this appeal. However, that is not a case here, and benefit of

reasonable doubt given by the trial court, since, cannot be said to be without satisfactory reasons, as such, this Court in not inclined to interfere with the impugned judgment and order, passed by the trial court.

7) For the reasons as discussed above, the appeal is liable to be dismissed. The same is dismissed.

(Prafulla C. Pant, J.)

Dt. October 26, 2006.
H.Negi